

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COREY BRACEY,)	
)	
Plaintiff,)	Case No. 1:11-cv-4-SJM-MPK
)	
v.)	
)	
)	
SUPERINTENDENT HARLOW, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's complaint in this civil rights action was received by the Clerk of Court on January 4, 2011 and was referred to United States Magistrate Judge Maureen P. Kelly for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on February 5, 2013 [152], recommends that Defendant E. Brownlee be dismissed from this action due to Plaintiff's failure to effectuate service in a timely manner. Specifically, it initially appeared that Plaintiff had failed to comply with an Order entered by the Magistrate Judge on January 9, 2013, which instructed him to provide proper instructions for service no later than January 23, 2013.

On February 6, 2013, the day after Magistrate Judge Kelly's R&R was entered, Plaintiff filed a motion [153] for service upon Defendant Brownlee. In that motion, Plaintiff states that he has had difficulty locating Defendant Brownlee's address due to Brownlee's movement within the Department of Corrections and Plaintiff's lack of internet access. Plaintiff further claims that he forwarded proper service instructions to the U.S. Marshal on January 22, 2013, the date on which he first learned Defendant

Brownlee's correct address at S.C.I. Greene. It appears Plaintiff was subsequently advised by the U.S. Marshal Service that their file had been closed and that Plaintiff would need to obtain another service order from the Court.

By text order dated February 7, 2013, Judge Kelly denied Plaintiff's motion for service as moot in light of her pending R&R. The Text Order instructed Plaintiff that he could file objections to the R&R and raise before this Court the issues set forth in his motion for service. Plaintiff did so, filing his objections to the Report and Recommendation [154] on February 11, 2013.

This Court having now reviewed de novo the complaint and documents in the case, together with the Report and Recommendation, Plaintiff's motion for service and his objections to the R&R, therefore, IT IS HEREBY ORDERED, this 9th Day of May, 2013, that this Court declines to adopt the Report and Recommendation [152] entered on February 5, 2013 and directs the Magistrate Judge to enter an order instructing the U.S. Marshal to effectuate service upon Defendant Brownlee.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
Chief U.S. District Judge

cm: All counsel of record.